

Application Serial No. 10/550,129  
Reply to office action of October 28, 2009

Patent  
Docket: CU-4424  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**


In re Application:	Rolf Berg	]	GRP ART UNIT: 1616
Serial No:	10/550,129	]	Ex.: Schlientz, Nathan W.
Filed:	May 9, 2006	]	
For:	CU-4424	]	

**Certification under 37 C.F.R. §1.8(a)**

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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted to the United States Patent and Trademark Office to the fax number and on the date indicated above.

  
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Commissioner for Patents  
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**RESPONSE TO RESTRICTION REQUIREMENT**

In the office action dated October 28, 2009, setting a 1-month shortened statutory period for a reply which ended on September 28, 2009, the pending claims 48-108 were restricted as follows:

Group I: Claims 48-84, drawn to a method of prevention and/or treatment of a list of conditions comprising administering the claimed compound;

Group II: Claims 85-100 drawn to a composition comprising a plant or fish oil, and a non- $\beta$ -oxidizable fatty acid entity; and

Group III: Claims 101-108 drawn to a method of producing an animal based product comprising feeding an animal a feed comprising the claimed composition.

Application Serial No. 10/550,129  
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Patent  
Docket: CU-4424

The Applicant hereby elect Group 1, **Claims 48-84** with traverse and respectfully request withdrawal of the restriction requirement for the reasons presented below. In addition, the Applicant elects the condition "metabolic syndrome". Further, the compound elected under item 2 of claim 48 is the compound of group (a). In other words, the claimed composition contains a combination of:

- 1) plant oil and/or fish oil; and
- 2) one or more compounds comprising non  $\beta$ -oxidizable fatty acid entities represented by

(a) the general formula  $R'' - \text{COO} - (\text{CH}_2)_{2n+1} - \text{X} - \text{R}'$ , wherein X is a sulphur atom, a selenium atom, an oxygen atom, a  $\text{CH}_2$  group, a SO group or a  $\text{SO}_2$  group; n is an integer of 0 to 11; and R' is a linear or branched alkyl group, saturated or unsaturated, optionally substituted, wherein the main chain or said R' contains from 13 to 23 carbon atoms and optionally one or more heterogroups selected from the group comprising an oxygen atom, a sulphur atom, a selenium atom, an oxygen atom, a  $\text{CH}_2$  group, a SO group or a  $\text{SO}_2$  group; and R'' is a hydrogen atom or an alkyl group containing from 1 to 4 carbon atoms; and/or

With regard to paragraph 2 of the Office Action, the Examiner states that the U.S. patent, U.S. 4,849,019, discloses compositions containing oils and phospholipids. However, these phospholipids are "normal" phospholipids and do not contain a non- $\beta$ -oxidizable fatty acid entity. In contrast, all the compounds of the present invention

Application Serial No. 10/550,129  
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Patent  
Docket: CU-4424

contain (in addition to a plant or fish oil) an entity with an X-group that blocks the  $\beta$ -oxidation. A combination of a plant or fish oil and such a non- $\beta$ -oxidable lipid (either a non- $\beta$ -oxidable fatty acid or a non- $\beta$ -oxidable incorporated in a more complex lipid (as indicated under 2b and 2c of claim 48) is thus not known from the prior art.

The single inventive concept is thus this unique combination of a plant or fish oil and a non- $\beta$ -oxidable lipid, and this single concept unifies the aspects indicated as Group I, II, and III. It is thus our opinion that all three groups can be maintained in this application.

With regard to paragraph 3 of the Office Action, the Applicant respectfully submits that since the combination of claims 48, 85, and 101 are novel, a method for treatment of various diseases, i.e. a generic claim, is also allowable.

Regarding paragraph 5 of the Office Action, only medical diseases are claimed that non- $\beta$ -oxidable lipid complexes or a non- $\beta$ -oxidable fatty acids are useful for. Moreover, the Applicant submits that the difference in effect between non- $\beta$ -oxidable lipid complexes or a non- $\beta$ -oxidable fatty acids with normal lipids or fats, is the X-entity which blocks the  $\beta$ -oxidation.

Ultimately, the Applicant identifies the following elected claims: claim 48, item 2 and the disease "metabolic syndrome", and claims 56-74.

Application Serial No. 10/550,129  
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Patent  
Docket: CU-4424

The Applicant retains the right to present the non-elected in a divisional application or to file a petition in case the present request for withdrawal of the restriction requirement is denied.

The applicants respectfully disagree with the restriction requirement.

Accordingly, withdrawal of the restriction requirement is respectfully requested, and election with traverse is confirmed.

This response is considered to be responsive to all points raised in the office action. Should the Examiner have any remaining questions or concerns, the Examiner is encouraged to contact the undersigned attorney by telephone to expeditiously resolve such concerns.

Respectfully submitted,

Dated: 2-26-2010



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